



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: FEBRUARY 16, 2023

IN THE MATTER OF:

Appeal Board No. 626783

PRESENT: RANDALL T. DOUGLAS, MEMBER

In Appeal Board Nos. 626783 and 626784, the claimant appeals from the decisions of the Administrative Law Judge filed November 4, 2022, which sustained the initial determinations holding the claimant ineligible to receive benefits, effective May 17, 2021 through May 23, 2021, on the basis that the claimant did not comply with certification requirements; and holding the claimant ineligible to receive benefits, effective May 24, 2021 through September 5, 2021, on the basis that the claimant did not comply with registration requirements.

At the combined telephone conference hearings before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances by the claimant and on behalf of the Commissioner of Labor.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was self-employed, and his business shut down as of March 21, 2020, as a result of the COVID-19 public health emergency. Shortly thereafter, he filed a claim for unemployment benefits. After filing his claim, the claimant chose to read the claimant handbook online. The claimant had filed

unemployment claims in the past and had some awareness of how the system worked. The handbook provided, and the claimant was aware, that once he filed a claim for benefits, he was required to claim benefits by certifying each week and establishing his continuing eligibility, in order to receive benefits.

The first record of the claimant certifying during the period beginning March 20, 2020 and ending September 18, 2021, is a telephone certification on September 26, 2020 for the week ending September 20, 2020. In early May 2021, the claimant certified for the period beginning the week ending October 25, 2020 through the week ending May 9, 2021, either with the assistance of a Department of Labor representative, or as part of his application for Pandemic Unemployment Assistance (PUA) benefits. The claimant received benefits for these weeks on June 3, 2021 and June 7, 2021.

Thereafter, it was the claimant's responsibility to certify weekly by telephone, or by certifying online. On May 21, 2021, the claimant certified online for the week ending May 16, 2021. Thereafter, and through September 5, 2021, there is no record that the claimant certified weekly, either by phone or online. The claimant had an open, valid unemployment claim for benefits during this period. There were no problems with the weekly certification systems in May 2021 and through September 5, 2021.

In December 2021, the claimant requested backdating for the period beginning May 17, 2021 through September 5, 2021, the expiration date the CARES Act.

OPINION: The credible evidence fails to establish that the claimant certified for benefits from May 17, 2021 through May 23, 2021, or that he registered during the period beginning May 24, 2021 through September 5, 2021.

We are not persuaded by the claimant's repeated assertions that he certified each week by telephone or online after he filed his claim for benefits in 2020, that he was successful in certifying each week, and that he missed no weeks, including during the period at issue. His testimony on this issue is inconsistent with his statements that he experienced problems with his certifications and called the Department of Labor multiple times to try to fix the problem to no avail. His account is also inconsistent with the undisputed testimony and documents produced by the Commissioner of Labor establishing that more than 25 certifications were completed in early May 2021, for the period going back to October 25, 2020, because the claimant had not certified on his own. The inconsistency and inaccuracy of the claimant's account is further demonstrated by his repeated statements that he did not receive any benefits until 2022, when both his bank records and his claims benefit ledger, establish that he received more than \$7,000 in benefits in June 2021.

Further, although the claimant testified that his problems involved requiring him to provide additional identification to the Department of Labor, the unemployment insurance hearing representative credibly testified that identification issues would not have impacted the claimant's ability to certify, but would only have delayed the release of benefits to him. The hearing representative further testified, without dispute from the claimant, that the claimant's "ID.me" issue arose after the period at issue in these determinations, when the claimant tried to file claims in October 2021 and December 2021.

We note that there were adjournments for the claimant to produce telephone records for the period at issue, and that those records were not produced, even after a subpoena was issued by the hearing Judge. However, the lack of phone records is not dispositive here. Rather, it is more significant that the claimant's testimony is inconsistent and inexact, and therefore less persuasive than the testimony and evidence provided by the Commissioner's witness, which fail to establish weekly certifications, or multiple phone calls by the claimant during the period at issue in these determinations. Further, even if we were to credit that the claimant made numerous calls to the Department of Labor, neither the claimant nor his witness was certain that such calls were made between May 17, 2021 and September 5, 2021, the only period at issue.

Although the claimant is adamant that he initially applied for unemployment benefits shortly after March 21, 2020, and that the July 15, 2020 date on the claimant application information screen is inaccurate, we find

that regardless of whether the claimant's original claim was filed in March 2020 or July 2020, the consistent, credible evidence fails to establish that the claimant certified weekly for benefits beginning May 17, 2021 through May 23, 2021, and from May 24, 2021 through September 5, 2021. Accordingly, we find that the claimant is not eligible for benefits during these periods.

DECISION: In Appeal Board Nos. 626783 and 626784, the decisions of the Administrative Law Judge are affirmed.

In Appeal Board Nos. 626783 and 626784, the initial determinations, holding the claimant ineligible to receive benefits, effective May 17, 2021 through May 23, 2021, on the basis that the claimant did not comply with certification requirements; and holding the claimant ineligible to receive benefits,

effective May 24, 2021 through September 5, 2021, on the basis that the claimant did not comply with registration requirements, are sustained.

The claimant is denied benefits with respect to the issues decided herein.

RANDALL T. DOUGLAS, MEMBER